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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman

WILLIAM MUNDELL
Commissioner

MIKE GLEASON
Commissioner

KRISTIN MAYES
Commissioner

BARRY WONG
Commissioner

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AZ CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE GENERIC
INVESTIGATION OF TARIFFING AND
NOTICE REQUIRMENTS FOR COMBINED
INTERSTATE AND INTRASTATE CALLING
PLANS

DOCKET Nos. RT-00000J-05-0329

COMMENTS OF QWEST
COMMUNICATIONS
CORPORATION AND QWEST LD
CORP.

Qwest Communications Corporation and Qwest LD Corp. ("Qwest") submit these
Comments in response to the request of the Arizona Corporation Commission Utilities Division
Staff ("Staff") dated October 26, 2006.

In Decision Number 67745,¹ the Arizona Corporation Commission ("Commission")
approved a Settlement Agreement between the Staff and Qwest, resolving a Complaint filed by
the Staff. The Complaint alleged that Qwest LD Corp. was required to file tariff and/or price list
revisions with the Commission prior to implementing a \$2.99 charge (the "Fees") as part of its
Qwest Choice Long Distance calling plan. The Commission characterized the Staff's allegations
as follows:

[Staff] filed a Complaint and Petition for Order to Show Cause against
QLDC alleging that the Qwest Choice Long Distance residential plan is in reality
a plan which offers the customer the capability of making both interstate and

¹ Order, *Utilities Division v. Qwest LD Corp*, Docket No. T-04190A-0904, April 11, 2005.

1 intrastate long distance calls. Staff alleged that the interstate and intrastate
2 portions of the plan are not severable or offered on a stand-alone basis. As such,
3 Staff believed that Qwest is required to include in its intrastate price lists and
4 tariffs all conditions of the plan applicable to intrastate long distance calls, which
5 in this case includes the \$2.99 surcharge.²

6 Qwest denied the Staff's allegations. Qwest answered that the Fees were assessed in
7 return for the capability provided customers to use QLDC's network to place interstate calls.
8 The only charges under the calling plan that applied to intrastate calls were the usage charges
9 that were filed in QLDC's Arizona tariffs and price lists. The usage based rate from the calling
10 plan was available for intrastate calling only for customers who chose to subscribe to the plan for
11 interstate calling. Qwest believed that there was no merit to Staff's claims that the Fees apply to
12 intrastate calls.³ That Qwest conceived of, and treated the Fees as interstate only was evidenced
13 by the fact that the QLDC counted the Fees in its interstate revenues for federal and state
14 reporting.⁴

15 Qwest also argued that as a legal matter, the Staff's claim that the interstate and intrastate
16 portions of the calling plan were not severable when considered in connection with the demand
17 that Qwest file the Fees with the Commission, would necessarily mean that the tariff and other
18 requirements of Arizona law identified in Staff's Complaint would apply to interstate service as
19 well as to intrastate service. Therefore, the remedy sought by the Staff would directly challenge
20 the exclusive jurisdiction Congress granted to the FCC over interstate communications and
21 carriers. The FCC has prohibited the tariffing of rates for interstate service in the intensely
22 competitive long distance market, because such filings are not necessary to protect consumers
23 and actually impede competition. Qwest concluded that the remedy sought by the Staff would be
24 preempted even if the Commission agreed with Staff that the Fees were applicable also to
25 intrastate communications.⁵ Qwest also argued that the relief sought by the Staff would have

26 ² Id., ¶12.

³ Id., ¶17.

⁴ Qwest LD Corp.'s Answer and Motion to Dismiss, pages 19-20.

⁵ Id. pp. 26-32.

1 extraterritorial reach, and impermissibly burden interstate commerce, in violation of the
2 Commerce Clause of the United States Constitution.⁶

3 Further, Qwest pointed out that a number of wireline long distance carriers with which
4 QLDC competes in Arizona offered interstate and intrastate long distance calling in return for a
5 combination of usage and fixed monthly charges, and that several such carriers had not filed with
6 or sought the approval of the Commission in connection with their fixed monthly charges.⁷

7 As recited by Decision No. 67745, the Staff and Qwest entered into settlement
8 discussions in an effort to resolve the allegations contained in the Staff Complaint. Ultimately,
9 the parties entered into a Settlement Agreement, which the Commission approved. The
10 Settlement Agreement provided for the initiation of a generic docket which was to have been
11 concluded within 18 months (extended by agreement to December 19, 2006), to address the filing
12 requirements and tariff obligations of IXC's. Under the Settlement Agreement, Qwest consented
13 to the Staff's rules interpretations, and to file the Fees in its Arizona intrastate tariffs, "until such
14 time as the generic docket is concluded or until the Commission issues a superseding order."⁸
15 Qwest has filed the tariffs required by the Settlement Agreement and Decision No. 67745, and
16 has complied with all the other provisions of the Settlement Agreement and Decision No. 67745.

17 Qwest therefore maintains a keen interest in the outcome of the generic investigation. If
18 the Staff's interpretation of the rules is not supported by the investigation, Qwest reserves the
19 right to modify its tariffs prospectively. However, more immediately Qwest's primary concern
20 is that there may be competitors who have not been subjected to the Staff's interpretations of the
21 regulation as has Qwest. At the time prior to the negotiation of the Settlement Agreement,
22 Qwest became aware that there were other carriers, including AT&T, which had offerings in
23 Arizona similar to Qwest's. These offerings provided the capability to place interstate and
24

25 ⁶ Id., pp. 33-34.

26 ⁷ Id., pp. 34-35.

⁸ Settlement Agreement at ¶¶1,5, Exhibit I to Decision No. 67745.

1 intrastate calls, with charges per minute of use equal to or greater than the corresponding Qwest
2 calling plan's usage charges, and monthly recurring charges greater than the Qwest Fees. Those
3 carriers' monthly recurring charges were not always specified in those carriers' Arizona tariffs or
4 price lists.

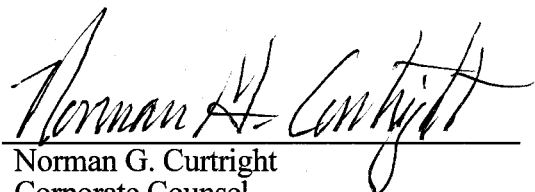
5 In Qwest's view the generic investigation should encompass more than the industry
6 participants' views with respect to the five legal questions the Staff has posed. It should also
7 encompass a comprehensive analysis of the tariff and service offerings of every IXC. Qwest's
8 expectation is that the Staff will report the results of its universal survey, and include in its
9 report any request Staff has made to specific IXCs to modify their tariffs in conformity with
10 Staff's interpretations, as well as whether specific IXCs may have made conforming changes to
11 their tariffs Unless the Commission Staff concludes that the interpretations of the rules that Staff
12 made for Qwest are incorrect, the generic investigation should conclude with swift specific
13 enforcement actions for any carriers which have not complied.

14 As a matter of fundamental fairness as well as sound policy, all carriers should be subject
15 to the same rules, the same interpretations the Commission and its Staff may make of those rules,
16 and the same enforcement policies of the Commission.

17 RESPECTFULLY SUBMITTED this 15th day of November, 2006.

18 QWEST CORPORATION

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21 By:



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2 for filing this 15th day of November, 2006, to:

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7 Copy of the foregoing hand-delivered
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